

TESTIMONY BEFORE THE UNITED STATES CONGRESS
ON BEHALF OF THE
NATIONAL FEDERATION OF INDEPENDENT BUSINESS

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Testimony of

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On Behalf of the National Federation of Independent Business

before the

United States House of Representatives
Subcommittee on Regulatory Affairs
Committee on Government Reform

on the subject of

The Small Business Paperwork Amnesty Act of 2006

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Introduction and Overview

Good afternoon Madam Chairwoman Miller and Members of the Subcommittee on Regulatory Affairs. My name is Karen Harned and I serve as Executive Director of the National Federation of Independent Business Legal Foundation (NFIB), the legal arm of NFIB.

NFIB, the nation's leading small-business advocacy association, is pleased to have the opportunity to be with you today offering our strong support for H.R. 5242, the "Small Business Paperwork Amnesty Act of 2006." H.R. 5242 would provide hard-working, well-meaning small-business owners with the opportunity to correct paperwork mistakes before they are forced to pay needless fines.

In my testimony, I will discuss why this legislation is so critically needed. Specifically, I will highlight the disproportionate impact regulations have on small business as compared to their larger counterparts and how that disproportionate impact cries out for a solution like the one offered in H.R. 5242. I will provide real-life examples of how this bill would work to protect the fastest-growing segment of the nation's economy without compromising important policy objectives designed to ensure our health and safety.

Small Business Gets the Big End of the Regulatory Stick

When it comes to regulatory paperwork costs, the fact is that small business gets stuck with the bill. A recent study performed by economist Mark Crain for the Small Business Administration estimated that regulations cost Americans \$1.1 trillion annually. This cost falls disproportionately on small businesses, with the smallest firms (20 or fewer employees) bearing the greatest burden -- \$7,647 per employee, per year.¹ Importantly, the study also shows that small businesses face a 45% greater regulatory burden than their larger counterparts.²

These regulatory costs on small business begin to gain some perspective when you consider the typical small business profile. For the average NFIB member, which employs five people and reports gross sales of between \$350,000 and \$500,000 per year, the \$7,647 per employee, per year price tag is huge – almost \$40,000 annually. That means that in many cases eight to ten percent of revenues generated from gross sales are paid out in regulatory costs – and that does not even include federal, state and local income taxes.

Part of the reason small business regulatory costs are so high is a function of what it means to be a small-business owner. A typical small-business owner, more often than not, is responsible for everything – ordering inventory, hiring employees, and dealing

¹ Crain, W. Mark, *The Impact of Regulatory Costs on Small Firms* (2005), available at <http://www.sba.gov/advo/research/rs264.pdf>.

² Crain, at 2.

with the mandates imposed upon his or her business by federal, state and local governments. For this reason, it is not surprising that paperwork remains a significant source of anxiety for American small businesses.³

According to an NFIB Research Foundation poll, the cost of paperwork for small businesses averages approximately \$50 per hour.⁴ These costs are incurred through the commitment of in-house personnel resources and/or outside resources depending on the subject matter and firm size. Small-business owners most frequently handle paperwork and recordkeeping related to licenses and permits (55 % of firms), purchases (46%), and clients/customers (46%) internally.⁵ They least frequently commit in-house personnel resources to the completion of financial (27%) and tax records (12%).⁶ In fact, three out of four small-business owners report that they pay an outside firm to handle their tax paperwork.⁷ Paid employees customarily do most of the paperwork and record-keeping in about 25-30% of firms.⁸ Employees are much more likely to do so in larger, small businesses than in the smallest ones regardless of subject matter (except tax). Unpaid family members do the paperwork in less than ten percent of cases.⁹

As NFIB, the Small Business Administration, and numerous economists have noted over the years, there is a tremendous amount of data supporting the important proposition that under the current regulatory state small businesses' are most negatively impacted by the mountain of paperwork they must complete just to open their place of business every day. Unlike big businesses, our small-business owners do not have compliance departments or attorneys on staff to warn them of each and every regulation coming down the pipeline. Instead, those responsibilities fall to small-business owners. Due to these sorts of resource constraints, small-business owners also are the least equipped to have the quality controls in place to ensure that they are aware of, and complete every form correctly.

Does this mean that small-business owners should get a free pass? Of course not. In fact, after working on behalf of small business for four and a half years, what I find most impressive about this constituency is their respect for the law and desire to do the right thing. For example, according to an NFIB Research Foundation poll on the Family and Medical Leave Act, virtually all requests for family and medical leave are granted

³ In NFIB's publication, *Problems and Priorities*, paperwork ranked 8th out of 75 major problems faced by small business. *Small Business Problems and Priorities*, Bruce D. Phillips, NFIB Research Foundation (June 2004).

⁴ NFIB Research Foundation National Small Business Poll, Vol. 3, Issue 5, *Paperwork and Recordkeeping* (December 2003), available at <http://www.nfib.com> (go to NFIB Research > View all Small Business Polls).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

whether required by law or not.¹⁰ (Approximately ninety-two percent of small-business owners who are not covered granted family leave to their employees.)¹¹ Yet, that same study also shows the confusion surrounding federal regulations – approximately one-quarter of small-business owners with less than 20 employees wrongly believed they were covered by federal, state, or local law or regulations governing employee requests for time off for family-related or health matters.¹²

All of this demonstrates that H.R. 5242 addresses a critical need. Let me be clear, ***NFIB supports strong regulatory reform measures that would dramatically reduce the regulatory burdens placed on small business.*** However, until such reforms are enacted, a stop-gap measure is needed to “stop the bleeding.” That’s where H.R. 5242 is particularly helpful. It starts with a correct view of the current regulatory landscape for both small business and the public good – it recognizes the tremendous regulatory burdens small businesses face, while at the same time ensuring that the public policy objectives those regulations are designed to address are met. It does not reward or create loopholes for “bad actors,” but instead gives well-meaning, hard-working small-business owners a chance to correct unintended mistakes before being forced to pay civil fines for their failure to dot every “i” and cross every “t”.

A Look at the Types of Paperwork Mistakes H.R. 5242 Would Forgive

I thought it would be beneficial to provide a few real-life examples of the types of mistakes that could be “forgiven” under H.R. 5242. Importantly, as crafted, H.R. 5242 does not “forget” these mistakes. It merely gives well-meaning, small-business owners the opportunity to correct them. Non-compliance is not an option under H.R. 5242.

With that as background, let’s look at the types of small businesses and mistakes that would be addressed if H.R. 5242 were to become law:

Nancy Klinefelter, an NFIB member is President of Baltimore Glassware Decorators, a small, 15-employee business started by her brother in 1977, tells a story of her trials in attempting to comply with the Environmental Protection Agency’s Toxic Release Inventory lead rule. The rule requires small businesses that use 100 or more pounds of lead in a year to provide EPA with detailed information regarding lead usage and any subsequent release of lead into the environment resulting from that use. Ms. Klinefelter’s business prints small quantities of custom glass and ceramic ware for proms and weddings, restaurants, and souvenir and novelty stores. In fact, her company has decorated the mugs for sale at the House gift shop. When they print mugs or glasses, they sometimes use lead-bearing colors on outside surfaces, which become part of the glass after they are fired. The lead does not leach out. As she testified before Congress after the rule was promulgated:

¹⁰ NFIB Research Foundation National Small Business Poll, Vol. 4, Issue 2, *Family and Medical Leave* (2004), available at <http://www.nfib.com> (go to NFIB Research > View all Small Business Polls).

¹¹ *Id.* at 11.

¹² *Id.* at 7.

For my company .. it is impossible to compile precise lead use records as required by EPA unless we track our color use on a daily basis. Since every lead-bearing color contains a different amount of lead .. we must make different calculations for each color used. We cannot simply take an average of color usage from May through December of last year .. and claim that our usage was the same for January through April.

...

As we began to compile our lead use data .. unexpected problems emerged. We buy decals from small decal printers that have fewer than ten employees and yet these companies must still provide lead content details to us for our TRI report. These printers are so small that they have no practical way of telling us how much lead is in each decal. We are still wrestling with this one and the deadline is looming!

...

I know that EPA has published estimates that say it will take 124 hours to track lead usage and complete the TRI paperwork. That is already quite a large number .. 3 full work weeks for one employee .. but sadly it is a gross underestimate.

I have already personally spent 95 hours trying to understand the TRI forms and requirements .. and I am still nowhere near the point where I can complete the forms with confidence. In addition .. I have spent 60 hours or more reconstructing retroactive color usage data. We are now spending about 4 to 5 hours per week tracking lead usage to enable us to have confidence in our 2002 TRI filing.¹³

Ms. Klinefelter's compliance issues with the EPA TRI lead rule point up why H.R. 5242 is sorely needed. After 95 hours of work, she could not have complete confidence that the numbers she was providing EPA were accurate. Although she was not fined in this case, her story paints a picture of the type of small-business owner H.R. 5242 is trying to help. It would give small businesses, like Ms. Klinefelter's glass decorating business, a chance to fix mistakes that are made despite the small-business owner's best efforts.

Still other small-business men and women have horror stories of small mistakes that ended up resulting in needless fines. Had H.R. 5242 been in place,

¹³ *The Lead Tri Rule: Costs, Compliance, and Science Before the House Committee on Small Business* (June 13, 2002) (statement of Nancy Klinefelter, President, Baltimore Glassware Decorators), available at wwwc.house.gov/smbiz/hearings/107th/2002/020613/klinefelter.asp.

these well-meaning small-business people might have had a chance to correct these minor regulatory violations.

Gary Roberts, the owner of a small company which installs pipelines in Sulphur Springs, Indiana, testified that he was fined \$750 by OSHA in May 1997 for not having a Hazardous Communication Program at a particular job site. The inspector was told that the program was in the main office, and that all the workers had been trained to follow it. One of the workers retrieved the program from the main office during the inspection. But, OSHA would not waive the fine.¹⁴

Similarly, Mr. Van Dyke, a muck crop farmer from Michigan, was fined in January 1999 for not having the proper employment disclosure paperwork. This omission was his first violation, and he settled for \$17,000.¹⁵

These are just a few examples of incidents where small-business owners are caught in a regulatory game of “gotcha” that, in many cases, would be remedied if H.R. 5242 were to become law. In each case, the small-business owner was well-intentioned and the underlying violation did not appear to pose a significant threat to the public health or be detrimental to the public good.

The Need for H.R. 5242: An Important Step Toward Eliminating Regulatory “Gotcha” for Good

Economic studies, polls, and real-life examples all indicate why H.R. 5242 is such an important and necessary piece of legislation. Moreover, it enjoys bi-partisan support going back to the Clinton Administration. In the words of Jere Glover, the Chief Counsel for the Small Business Administration’s Office of Advocacy testifying in support of similar legislation under consideration at that time: “[W]here it is reasonable, where it is a first-time violation, do not go in and play ‘gotcha’ with the business. I think that makes a lot of sense. And I think your legislation also makes a lot of sense.”¹⁶

Passage of the Small Business Paperwork Amnesty Act would go a long way to ensure that, in cases of first time paperwork violations, small businesses are able to correct those violations without penalty. The legislation would allow small businesses to remedy violations in a reasonable timeframe so that mistakes can be corrected and compliance can be achieved. Notably, the Small Business Paperwork Amnesty Act

¹⁴ Small Business Paperwork Reduction Act Amendments Of 1999, H.R. Rep. No. 106-8, 1999 WL 51553 at *7 (Feb. 5, 1999); *see also* Small Business Paperwork Reduction Act Amendments of 1998, H.R. Rep. 105-462, 1998 WL 130710 at *10 (Mar. 24, 1998).

¹⁵ Small Business Paperwork Reduction Act Amendments Of 1999, H.R. Rep. No. 106-8, 1999 WL 51553 at *7 (Feb. 5, 1999).

¹⁶ Small Business Paperwork Reduction Act Amendments of 1998, H.R. Rep. 105-462, 1998 WL 130710 at *11 (Mar. 24, 1998); *see also* Small Business Paperwork Reduction Act Amendments Of 1999, H.R. Rep. No. 106-8, 1999 WL 51553 at *6 (Feb. 5, 1999).

would accomplish this without a loss to the safety and health protections provided under the laws designed to protect our communities.

On behalf of NFIB's members, 92 percent of whom indicate that they believe small-business owners should be exempt from first-time paperwork violations, I commend you Madam Chairwoman for holding a hearing on this important legislation and trust that your colleagues will follow your lead by supporting the Small Business Paperwork Amnesty Act.

Thank you for inviting me to testify today. I would be pleased to answer any questions you have.

CORE VALUES

We believe deeply that:

Small business is essential to America.

Free enterprise is essential to the start-up and expansion of small business.

Small business is threatened by government intervention.

**An informed, educated, concerned, and involved public
is the ultimate safeguard for small business.**

Members determine the public policy positions of the organization.

**Our employees and members, collectively and individually, determine the success of
the NFIB's endeavors, and each person has a valued contribution to make.**

**Honesty, integrity, and respect for human and spiritual values are important
in all aspects of life, and are essential to a sustaining work environment.**

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